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NO. 07-456

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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

PAUL BAGHERPOUR
Petitioner

vs.

KENNETH SNYDER and JACQUELINE SNYDER
Respondents

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

REPLY TO BRIEF IN OPPOSITION

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REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I. Introduction

In this Reply Brief, Petitioner wishes to point out the error in a number of statements by Respondents, which are at best misleading, and at worst outright falsehoods.

II. Counter-Argument

A. On Page 3 of the Brief in Opposition, Respondent states: "Bagherpour argues - *for the first time* - that...the prohibition clearly skirts on the edge of unconstitutional abridgement of free speech." Furthermore, Respondent also states: "First, Bagherpour failed to raise any First Amendment challenge to §955(h)(6) below, thus waiving the first issue presented in his Petition for Writ of Certiorari." (Emphasis supplied)

These statements are a direct contradiction to the Record below. Defendant, Paul Bagherpour, filed in his Response to Plaintiffs' Motion for Partial Summary Argument language quite similar to the very Petition for this Writ of Certiorari, which stated as follows:

> "In fact, what we are dealing with is the subtlety and nuance of language, its implications and inferences, usually the basis of subjective

> interpretation, but Plaintiffs' argument would remove all of this context and present these words in a vacuum. This is always dangerous and in many instances *skirts on the edge of unconstitutional abridgement of free speech.*" (emphasis added)

Also, in Defendant Bagherpour's closing argument, the First Amendment and the non-abridgement of free speech was alluded to by counsel, which is also part of the Record below.

B. Secondly, on Page 5 of the Brief in Opposition, it is stated in a footnote that "Bagherpour likewise never claimed in his initial brief to the Third Circuit that the punitive damage award of $30,000 was in any way excessive."

Of course, the Petitioner has all along claimed that the imposition of punitive damages was not merely "excessive" but a misapplication of law in its entirety. Nevertheless, in the initial Brief by Petitioner before the Third Circuit, it was stated in the Summary Statement that "Appellant finally avers that punitive damages awarded were unjustified..." Also, in comparing the punitive damages in the instant case with a similar case from the Second Circuit (Portee v. Hastaba), the argument was advanced that said case considered an analysis of the net worth of the defendant before imposition of punitive damages, to determine whether or not they were excessive.

C. Finally, it is stated on Page 3 of the Brief in Opposition that the opinion by the Third Circuit below stated: "there was ample circumstantial evidence to support the Jury's finding that Bagherpour engaged in intentional discrimination." This is true; however, in Bagherpour's Petition for Reconsideration, it was pointed out that, if in fact there was such circumstantial evidence, rather than making a vague generalization regarding the 300 pages of evidence and testimony, the Third Circuit was obligated to elaborate and specify the so-called circumstantial evidence which supported the Jury's conclusion, since Petitioner had averred that there was no such evidence.

III. Conclusion

For the above reasons, Petitioner has filed this Reply to the Brief in Opposition.

Respectfully submitted,

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